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AN ACT REFORMING RE-ENTRY AND COMMUNITY SUPERVISION OF CRIMINAL DEFENDANTS AND OFFENDERS TO STRENGTHEN PUBLIC SAFETY

SECTION-BY-SECTION SUMMARY AND BACKGROUND

Overview: The Act proposes the establishment of the Department of Re-entry and Community Supervision ("the Department") within the Executive Office of Public Safety and Security ("EOPSS"). The Department will supervise all adult criminal defendants and offenders released on probation or parole, which will be referred to together as "community supervision." Probation officers who supervise adult criminal defendants and parole officers will be replaced with community supervision and community correction officers employed by the newly created Department. The Office of the Commissioner of Probation will remain, but will supervise only juvenile and probate court matters. The Parole Board will remain, but will be responsible solely for considering whether to grant eligible inmates permits to be released from incarceration under community supervision, the conditions of such release, and revocation upon violation of those conditions. Many sections of the General Laws will be affected technically and substantively by the bill, in some cases merely to reflect the existence of the Department, and in other cases to incorporate its role and functions in the public safety community.

SECTIONS 1-15, 17-31, 35-41, 43, 48-50, 52-57, and 69-72. These sections make technical amendments to the language of the General Laws to reflect the replacing of probation and parole officers with community supervision and community correction officers, the organizational changes that will result from the creation of the Department of Re-entry and Community Supervision as a new agency, and the restructuring of the Parole Board as an independent agency within EOPSS.

SECTION 16. Permits defendants serving mandatory minimum sentences for drug crimes, who would otherwise qualify based on their good behavior in prison, to participate in supervised work release programs outside the prison walls.

Background: Chapter 94C of the General Laws currently prevents even non-violent inmates serving mandatory minimum terms for drug offenses, whose custodians would otherwise find them eligible, from participating in work release and other programs. The change will enhance re-entry efforts, reduce recidivism and crime, ensure more successful outcomes for released offenders, and reduce the escalation in costs associated with increasing rates of incarceration.

SECTIONS 32-34. Increase the potential award of earned good conduct credits for an inmate of a state or county correctional facility from 2.5 to 5 days per month per program, and from 7.5 to 10 days per month total, and further allows the Commissioner of Correction flexibility to award up to 10 days of earned good conduct credits for an inmate's successful completion of long-term programming, such as an approved educational program.

Background: These changes create increased incentives for inmates to participate in programs while in prison, providing additional opportunities to develop skills that will improve prospects for success outside of prison, reduce recidivism, and decrease incarceration costs.

SECTION 42. This section, the core of the bill, adds three new chapters to the General Laws: chapter 127A, establishing the Parole Board as an independent agency within the EOPSS; chapter 127B, creating a new, unified Department of Re-entry and Community Supervision; and chapter 127C, requiring mandatory post-release supervision.

Background: The Act centralizes all community supervision of offenders in a single, unified agency, which will supervise defendants from the early pretrial stages of the criminal process through release to the community after incarceration. It will introduce a continuum of supervision and consistency to community supervision of offenders. From arraignment in court to release from prison, community supervision of all offenders will be monitored by one agency that will be equipped to provide a range of supervision and services. Consistent with the proposed consolidation, this section also proposes mandatory post-release supervision of all inmates. Whether they complete their sentences or are granted release by the Parole Board, all former inmates will serve a period of supervision in the community with re-entry services such as job training, substance abuse treatment, and education. A wide variety of research confirms the public safety benefits of this approach.

Chapter 127A: Parole Board.

Adds a new chapter, 127A, to the General Laws, which establishes the Parole Board as an independent agency, and consolidates statutes currently codified at G.L. c. 27, §§ 4 and 5, and G.L. c. 127, §§ 128, 130, 130A, 131, 131A, 133, 133A, 133B, 133C, 133D, 133E, 134, 148, 154, 155, 156, 157, 166, 167, 168, and 169. The proposed chapter 127A:

- Restates the processes for appointment of Parole Board members, the eligibility and hearing processes, the procedures for release to discretionary community supervision, the process for revocation of a permit to be at liberty, and the process by which applications for pardons and commutations are evaluated.
- In addition to the consolidation of the above current statutes, this new chapter establishes how the Parole Board will interact and co-exist with the Department of Re-entry and Community Supervision and expands the criteria allowing for the appointment of special Parole Board members in situations of significant backlog or in cases of conflict of interest.

Chapter 127B: Department of Re-entry and Community Supervision.

The Act adds a new chapter, 127B, to the General Laws, an enabling statute creating the Department of Re-entry and Community Supervision, an agency within the executive branch that will supervise all adult criminal defendants and offenders, centralizing all community supervision in one agency from the early pretrial stages of the criminal process through release to the community. Proposed chapter 127B:

- Sets out the structure of the Department, which will be under the supervision and control of a Commissioner appointed by the Secretary of Public Safety and Security with the approval of the Governor.

- Establishes the responsibilities of the Department, which include the supervision of –
 - all persons placed on community supervision by the superior, municipal, or district court, including pretrial probation under G.L. c. 276, § 87;
 - any sentence imposed under chapter 279, including community supervision, suspended, split, and consecutive sentences;
 - all prisoners released on community supervision permits granted by the Parole Board;
 - all prisoners pardoned by the Governor and released upon conditions of community supervision;
 - all prisoners released to mandatory post-release supervision; and
 - all sex offenders subject to lifetime community supervision.
- The Department will employ two different groups of officers, community supervision officers and community correction officers, with responsibilities designated by the Commissioner of the Department. Community correction officers will be appointed as special state police officers. The level of supervision a defendant or inmate requires will determine whether he or she is assigned to a community supervision officer or a community correction officer.
- Community supervision and correction officers will make recommendations at the various stages of the criminal process, using a validated risk and needs assessment tool adopted by the Department to inform the court's and the Parole Board's sentencing, release, and revocation determinations and to formulate recommendations for supervision levels and appropriate conditions for each defendant or offender. Conditions of community supervision may include a wide range of requirements and services designed to protect the public and rehabilitate the offender, which will be incorporated in a comprehensive community supervision plan.
- The Department will oversee and operate programs established to provide the tools and services necessary to complete the terms of community supervision. The programs will include combining the community corrections programs currently employed by the Office of Community Corrections and the re-entry centers currently employed by the Parole Board.
- Supervision levels will be based on the risk assessment. Conducting the needs assessment will be left to the discretion of the court, the Parole Board or the Department, and it will assist in the determination of the conditions of supervision. Where appropriate, the Department will employ the use of graduated and intermediate sanctions for violations of the conditions, which have proven to be effective methods.
- The Department will keep a centralized record of every person placed in its supervision, including treatment, investigation, employment, and payment of fees and fines, and will have access to all records necessary to ensure a complete record of each offender's history.
- Sex offenders who have been sentenced to community supervision for life under G.L. c. 265, § 45, or G.L. c. 6, § 178H, will be transferred to the jurisdiction of the Department (instead of the Parole Board under current G.L. c. 127, §§ 133D and 133D ½).
- Chapter 127B establishes the community supervision revocation process, as well as community supervision fees, fines, and restitution.

- The Commissioner of the Department is required to develop and implement a public education program about community supervision and corrections and to study the results of the effectiveness of the Department three years after its inception, including a review of its effect on the rate of recidivism, spending, and prison commitments.
- The Secretary of Administration and Finance is authorized to transfer funds between the Department of Re-entry and Community Supervision, the Parole Board, and the Department of Correction to facilitate the transfer of funds and infrastructure among these agencies. To realize the savings anticipated from consolidation, the flexibility to transfer funds among the agencies involved is essential.
- To clearly state that the new Department will be charged with supervision of parolees and probationers transferred from other states, chapter 127B incorporates the Interstate Compact for Adult Offender Supervision, currently codified at G.L. c. 127, §§ 151A-151L.

Chapter 127C: Mandatory Post-Release Supervision

Adds a new chapter, 127C, to the General Laws to provide for mandatory post-release supervision for state prison inmates who would otherwise be released directly from prison to the street.

- Inmates who are not released on parole before expiration of their sentences, or to consecutive sentences of probation, will be required to be supervised by the Department for an additional period of time after expiration of their sentences.
- Duration of mandatory post-release supervision will be 25% of the sentence served, but no less than 9 months and no more than 2 years. After 6 months, supervised individuals can qualify for early release from supervision by demonstrated good behavior.
- Violation of terms of mandatory post-release supervision can result in graduated sanctions, up to incarceration for the duration of the mandatory supervision period.

Background. Inmates who do not qualify for parole, or whose sentences are structured so as not to permit a period of parole (such as a 5-year to 5-years-and-a-day term), return directly to their communities without any supervision or assistance re-entering society. A study of Massachusetts prisoners released in 2006 demonstrates that inmates who are supervised after release are *half as likely* to commit new crimes as those who are released with no supervision.

SECTIONS 44-47. Place the responsibility for the indigency verification process for purposes of appointment of public counsel with the Department of Re-entry and Community Supervision.

SECTION 51. Repeals chapter 211F, the enabling statute for the Office of Community Corrections within the Office of the Commissioner of Probation (“OCP”). The Department of Re-entry and Community Supervision will assume this function as a part of its mission, utilizing community corrections centers together with the Parole Board’s regional re-entry centers to provide supervision and services to a larger population of offenders than are currently served by the community corrections centers, and with greater flexibility.

SECTIONS 58-64. Amend the Victims Bill of Rights, chapter 258B, to reflect the systematic changes that will result from the implementation of this Act. Section 62 adds a provision that requires victims

and witnesses of crimes to be notified when a defendant is placed on electronic or remote monitoring and also adds a requirement of notification when a defendant is placed in custody as a result of a community supervision surrender hearing.

SECTION 65. This section removes the responsibility for maintaining the court activity record information system and the statewide domestic violence recordkeeping system from the Commissioner of Probation and places it with the Administrative Office of the Trial Court ("AOTC").

Background: Historically, the OCP has controlled, and probation officers have maintained, the Trial Court's criminal activity records. The AOTC is in the process of a complete overhaul and updating of court records under the "MassCourts" system. This amendment gives ownership of the Trial Court's records to the Trial Court and gives court personnel the responsibility to maintain their own records, improving both the accuracy and efficiency of the court's record-keeping.

SECTIONS 66-68. Repeal the provisions regarding lifetime parole invalidated as unconstitutionally vague in *Commonwealth v. Pagan*, 445 Mass. 161 (2005). The continued existence of these invalid provisions on the books causes confusion to the public, the courts, and practitioners.

SECTION 73. Gives court staff, rather than probation officers, the duty to provide the court with a copy of the defendant's criminal record information at a bail hearing.

Background: Currently the probation officers at the court are responsible for many clerical functions that can be performed by court staff. The Act assigns many of these functions to court staff in place of probation officers. This cost savings and efficiency measure will allow community supervision and community correction officers to focus on supervision issues. *See also* SECTION 65.

SECTION 74. Amends the bail statute, G.L. c. 276, § 58, to clearly state that the new Department of Re-entry and Community Supervision will be responsible for the supervision of adult defendants and offenders and will participate in the bail hearing process. This section also reassigns several clerical and court record-keeping duties from probation officers to court staff.

SECTION 75. Amends G.L. c. 276, § 58A, the statute governing dangerousness hearings, by adding violations of harassment prevention orders under newly enacted chapter 258E of the General Laws to the list of offenses for which the Commonwealth may move for an order of pretrial detention.

SECTION 76. This section reassigns several clerical and court record-keeping duties in connection with a dangerousness hearing from Probation to the court clerk's staff.

SECTION 77. Restates the Department's responsibility for the supervision of defendants and offenders and its participation in the court process by modifying the bail revocation statute to include the Department in the hearing process.

SECTIONS 78-79. Amend the jurisdiction of the OCP, excluding supervision of adult criminal offenders, but retaining probation officer duties, supervision, and services in all juvenile and probate court matters.

SECTION 80. Amends the primary statute governing supervision of adult defendants and offenders by placing the responsibility, both pretrial and after sentencing, within the Department. Jurisdiction of juvenile court probation matters remains with the OCP.

SECTIONS 81-94. To clearly state that the OCP has jurisdiction of juvenile and probate court probation matters, but not supervision of adult criminal offenders, these several sections amend the statutes governing the powers, duties, and administration of the OCP and probation officers, including appointment of clerical staff and temporary probation officers, geographical assignments of clerical staff, procedures for accounting for expenses, allowances for transportation expenses, police powers, the supervisory authority of the Commissioner of Probation, and reporting requirements for probation officers.

SECTION 95. Transfers ownership and responsibility for administration and maintenance of all criminal and juvenile delinquency records, including the statewide domestic violence record-keeping system, from the OCP to the AOTC.

SECTIONS 96-97. Retain the Commissioner of Probation's responsibility to establish uniform forms of blanks and records, but only for use in the probation offices of the juvenile, probate, and district court juvenile sessions.

SECTIONS 98-101. Place the responsibility for assisting the court in identifying and referring offenders to pretrial diversion programs with the Department of Re-entry and Community Supervision.

Background: The district and municipal courts have jurisdiction to divert certain first-time offenders, ages 17-22, to a pretrial diversion program. Currently, the OCP assists the court in identifying appropriate programs and making referrals to the programs. These sections amend the relevant statutes to place jurisdiction for all adult community supervision with the Department of Re-entry and Community Supervision.

SECTIONS 102-103. Amend two sentencing statutes, G.L. c. 279, §§ 1 and 1A, by adding community supervision as an alternative sentence, allowing the court to suspend a sentence of imprisonment and/or payment of a fine and instead sentence a person to community supervision.

SECTION 104. Grants authority to community supervision and community correction officers to surrender subjects of community supervision for violating the conditions of their supervision. This section also gives the court the added option of modifying the conditions of supervision in the event it continues suspension of the sentence. Where the suspension is revoked, the amendment adds the option of imposing a portion of the sentence rather than requiring the imposition of the entire sentence.

Background: Under current law, if a judge sentences a defendant to a term of years, but suspends execution of the sentence pending a term of probation, the judge has only two choices if the defendant violates the terms of probation: return the defendant to probation, or order execution of the sentence in its entirety. This amendment allows judges to impose only a portion of the sentence, consistent with the Act's preference for graduated and intermediate sanctions where appropriate.

SECTION 105. Applies the new mandatory post-release supervision requirement of chapter 127C proposed in this Act on a prospective basis only. This section also requires the Commissioner of Re-entry and Community Supervision to report on the first two years' experience of mandatory post-release

supervision and to recommend whether the requirement should apply to those serving sentences for misdemeanors.

SECTION 106. Requires the OCP, the AOTC, and EOPSS to develop and implement a plan for the orderly transfer of the duties and functions of the OCP that relate to community supervision of adult defendants and offenders to the Department of Re-entry and Community Supervision. This plan will also govern the transfer of employees, assets, proceedings, rules and regulations, property, and legal obligations and rights that relate to community supervision of adult defendants and offenders from the OCP to the Department.

SECTION 107. Transfers the employees, proceedings, rules and regulations, property and legal obligations of the Office of Community Corrections to the Department of Re-entry and Community Supervision.

SECTIONS 108-109. Preserve the terms and conditions of the collective bargaining agreements of the OCP and the Office of Community Corrections until their expiration dates, at which time the Commonwealth's Personnel Administrator and the Secretary of Public Safety and Security will study and determine appropriate Commonwealth job titles for the transferred employees and place them in a statewide bargaining unit. Those employees transferred who formerly held probation officer titles will be placed in a newly formed statewide bargaining unit 5B. All initial hiring for employees in bargaining unit 5B will be subject to a merit hiring system that includes a competitive exam conducted under the direction of the Personnel Administrator.

SECTION 110. Requires the Chief Justice of Administration and Management and the Commissioner of Capital Asset Management, in consultation with the Secretary of Public Safety and Security, to develop and implement a plan for the Department's use of office space necessary to perform the duties and functions it has assumed.

SECTION 111. Requires the Chair of the Parole Board and EOPSS to develop and implement a plan for the orderly transfer of the duties and functions of the Parole Board that relate to community supervision of adult offenders to the Department. This plan will also account for the transfer of employees, assets, proceedings, rules and regulations, property, and legal obligations and rights that relate to community supervision of adult offenders from the Parole Board to the Department.

SECTION 112. Facilitates the transfer of employees of the Parole Board to the Department, preserves any existing veteran or civil service status or rights, and leaves in place current collective bargaining unit representation and agreements.

SECTION 113. Requires the Secretary of Labor and Workforce Development, in consultation with the Secretary of Public Safety and Security, to institute a workforce retraining initiative to mitigate potential impacts on employees affected by the transfers and consolidation of departments.

SECTION 114: Requires the State Auditor to conduct a financial audit of the transfer of assets and employees from the OCP, the Office of Community Correction, and the Parole Board to the Department.

SECTION 115. Provides that in the case of any conflicts with existing laws, the Act controls to accomplish its purposes.

SECTIONS 116-117. Establish July 1, 2011 as the effective date for the sections of the Act initiating the transfer of assets and employees. The remainder of the bill will take effect 120 days later.

Background: To accomplish the transfers of responsibilities, employees, property, and intangibles contemplated by this Act, the new organization, structure, and staffing of affected departments must be put in place. Thus, the transfer process will begin immediately at the beginning of the fiscal year and will be completed 120 days later, at which point the Act will be fully implemented.